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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,854	08/04/2003	Richard E. Stamper	15268-0007	5857

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BAKER & DANIELS LLP  
300 NORTH MERIDIAN STREET  
SUITE 2700  
INDIANAPOLIS, IN 46204

EXAMINER
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JACKSON, BRANDON LEE

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/633,854

Applicant(s)

STAMPER ET AL.

Examiner

Brandon Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 2,5-7 and 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,8 and 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/12/2003 and 4/1/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species:

Species I. Claims 1-11, 20-22

Species II. Claims 1, 3, 4, 8, 12-19, and 20-22.

The species are independent or distinct because Species II comprises a constraint member and force applier configured to load each of the constraints simultaneously.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 3, 4, 8, and 20-22 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

During a telephone conversation with William Meyers on 3/7/2007 a provisional election was made without traverse to prosecute the invention of Species II, claim 1-4, 8, 12-19, 20-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2, 5-7, and 9-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show link system, first link, second link, third link, fourth link, constraints, head restraint member, couplers, first joint, second joint, third joint, and compliant link as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the

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sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 4, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eingorn (U.S. Patent 4,667,660). Eingorn discloses a link system (10) comprising a plurality of links (fig. 1), a first constraint (25) coupled to a first link (20) adapted to engage the left side of the head, a second constraint (25) coupled to a second link (24) adapted to engage the right side of the head, wherein the link system is configured to exert force on the head (col. 5, lines 55-63) through the first and second links (20, 24); is capable of being adapted to the geometry of the head such that it remains fixed over a period of time. The constraints (25) are pins (112) including pin heads (186). The first and second links (20, 24) are configured to support a plurality of constraints (110). The through holes (110) allow for a plurality of constraints to be coupled with the first and second links (20, 24). The third link (18) is coupled to the first link (20) at a first joint (126), wherein the first link (20) has one degree of freedom relative to the third link (18). The second link (24) is coupled to the fourth link (22) at a second joint (mirror image of 126), wherein the second link (24) has on degree of freedom relative to the fourth link (22). The fourth link (22) is coupled to the third link (18) at a third joint (128), wherein the third link (18) has one degree of freedom relative to the fourth link (22). Eingorn fails to disclose a plurality of first and second constraints. It would have been obvious to one of ordinary skill in the art at the time of the invention to add additional constraints to the first and second links, since it has been held that mere duplication of the essential

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working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Moreover, the first and second links (20, 24) are configured with through holes (110) that more constraints (25) can be coupled through.

Claims 12-17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eingorn (U.S. Patent 4,667,660) in view of McFadden (U.S. Patent 6,179,846). Eingorn substantially discloses the claimed invention; see claims 1, 3, 4, and 8 rejections above. Also, Eingorn discloses that the link system is coupled with a torso restraint to fix the head at a certain position relative to the torso (col. 8, lines 53-61). The torso restraint is coupled (col. 8, lines 30-32) to the third link (18). Eingorn fails to disclose a compliant member comprising a compliant link and force appliers configured to simultaneously adjust the force applied to the constraints. However, McFadden teaches a link system (10) comprising a compliant member (fig. 1) comprising a compliant link (30) and a force applier (50). The force applier is coupled (14) to the third link (18) and the compliant link (30) is coupled to the fourth link (16). Through adjustment of the force applier (50) the force applied to the constraints (44) may be simultaneously adjusted and adapted to the geometry of the head of a person. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Eingorn device with the compliant member, as taught by McFadden, in order to allow for easy adjustment of size and amount of pressure of the constraints. With respect to claims 20-22, Eingorn/McFadden teaches the elements of the claimed invention; therefore the method steps would be obvious because they would have resulted from the use of the Eingorn/McFadden device.

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Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eingorn (U.S. Patent 4,667,660) and McFadden (U.S. Patent 6,179,846), further in view of Guigui et al. (U.S. Patent 5,674,186). Eingorn/McFadden substantially discloses the claimed invention; see claim 17 rejection above. Eingorn/McFadden fails to disclose a third link that extends from the left half of the head to the right half of the head. However, Guigui teaches a link system (fig. 1) comprising links (1) that extend from the left side of the head to the right side. It would be obvious to one of ordinary skill in the art to extend the third and fourth links of Eingorn/McFadden to meet in the rear of the head, as taught by Guigui, in order to provide more stability in the device and insure the constraint are at the same height on either side of the head.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon Jackson  
Examiner  
Art Unit 3772

BLJ

  
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3/19/01